Filed 8/26/19 P. v. Robles CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. EDUARDO ROBLES ROBLES, Defendant and Appellant.	2d Crim. No. B290555 (Super. Ct. No. 1411395) (Santa Barbara County)

Eduardo Robles Robles appeals from the judgment after a jury convicted him of first degree murder (Pen. Code,[1] §§ 187, subd. (a), 189, subd. (a)) and theft (§ 487, subd. (c)). The jury also found true allegations that the murder was willful, deliberate, and premeditated, and that Robles used a deadly weapon to commit his crimes (§ 12022, subd. (b)(1)). The trial court sentenced him to 25 years to life in state prison, plus one year.

[1] All further unlabeled statutory references are to the Penal Code.

Robles contends: (1) there was insufficient evidence that the murder was willful, deliberate, and premeditated; (2) the trial court erred when it admitted evidence of his prior acts of domestic violence and instructed the jury on the use of that evidence; (3) the jury instructions on premeditation and provocation (see CALCRIM Nos. 521 & 522) misstate the law; (4) prosecutors committed misconduct at various stages of trial; and (5) these errors, considered cumulatively, denied him a fair trial. Robles also contends he is entitled to additional custody credits, and asks us to independently review transcripts and documents from *Pitchess*[2] proceedings to determine whether the court improperly withheld discoverable materials. We correct Robles's custody calculation, and otherwise affirm.

FACTUAL AND PROCEDURAL HISTORY

In June 2012, Robles lived in Lompoc with four roommates. His girlfriend, Selina Bustos, lived in Lompoc with her mother. She was planning a two-week trip to Mexico with her family.

On June 14, Robles and Bustos exchanged several text messages about her upcoming trip. He wanted to see her before she left. Bustos sent him a message that said, "I would like to see you but maybe it is better that we don't see each other." Robles responded, "Why is it better that we don't see each other?" He later sent messages that said, "I want to talk to you and you ignore me" and "I give you space all day and you don't pay attention to me."

The next morning, Bustos sent a text message to Robles and asked how he was doing. Robles replied, "I woke up alive. I think it's already a plus." In another message he said,

---

[2] *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

"Everything was good and all of a sudden you get—I don't know how. I don't have any idea of what's happening." He accused her of "acting weird" and said that he could "never please [her]."

Later that morning, Bustos sent a text message to her sister, Elvira Martinez. "I have been trying to break up with [Robles] but when I tell him he says he is going to kill himself," she wrote. "[L]ike four to three times I have been trying to break up."

Around noon, Robles asked Bustos to go to dinner with him that evening. She agreed as long as she could be home by 10:00 p.m. to finish packing for her trip. Robles said he did not want to seem selfish but was "very attached" to her.

Robles told Bustos that he would pick her up at 7:00 p.m. She responded, "Let's try that, okay. Like if it was the last time." Robles replied, "But is not going to be the last time or will it be?" A few minutes later he wrote, "Why don't you answer, love?" He sent Bustos another message an hour later: "Love, answer me my message." Bustos replied that she was "super busy." Robles said that he understood, but insisted that she answer his question.

At 6:30 p.m., Bustos told Robles that her brother-in-law had ordered pizza and invited them to join. Robles reluctantly did so. During dinner, he sent Bustos several text messages asking her if they could leave. They left shortly after 8:00 and went to Robles's house. They stayed in his bedroom for about half an hour, left for a while, and returned around 9:30.

Shortly after 10:00 p.m., Robles called a friend, Rosa Bueno, and asked her for a ride to a bank in Solvang. Bueno picked up Robles a half-hour later. He was calm and quieter than usual.

At 10:30 p.m. Bustos's phone received a call from her mother, Elvira Lopez. Bustos did not answer. Around the same time, Martinez sent Bustos a text message asking where she was. Bustos did not respond. Ten minutes later, Lopez received a text message from Bustos's phone that said she was on her way home. Phone records showed that Bustos's phone was in the same general area as Robles's at that time, traveling toward Solvang.

After Robles withdrew $400 from an ATM in Solvang, he asked Bueno to drive him to Santa Barbara. She agreed to do so. At 11:15 p.m., a text message was sent from Bustos's phone to Robles as the two phones moved south on Highway 154. It said, "I called you for a coffee . . . and to ask you things about going to Mexico." A few minutes later, a text message from Bustos's phone was sent to Lopez. It said that Bustos was at Robles's aunt's house. The phone was near Lake Cachuma at that time. It was in Santa Barbara by 11:30.

Bueno stopped at a Santa Barbara gas station and told Robles that she was too tired to drive him any further. Robles attempted to withdraw more money but was unsuccessful. He then approached a taxi driver and asked for a ride to Tijuana. The driver said the trip would cost $500. The two left around midnight, and arrived in Tijuana about four hours later.

During the drive, Robles sent a text message to Officer David Garcia[3] that said, "Your rat is dead, find it before now that you have time." Garcia responded, "What?" Robles did not reply.

A few minutes later, a text message was sent from Bustos's phone to Robles's phone: "Love, someone is following

---

[3] Robles worked part-time as a police informant. Officer Garcia was his handler.

me, come pick me up." Bustos's phone then sent a text message to Officer Garcia: "Please don't let things stay like this. The thing about Eduardo is innocent. Find her body and send it with her family." Garcia did not recognize the phone number and asked, "Who is this?" A few minutes later Garcia sent Bustos's phone a text message: "Call me."

Robles arrived in Tijuana around 4:00 a.m. He took something from the floorboard of the taxi and left. At 4:45, he placed a call from an area near the United States-Mexico border. A few minutes later, a call was placed from Bustos's phone to the same phone number from the same general area.

At 5:30 a.m., Lopez called Martinez and told her that Bustos was not there. Bustos's car was still parked outside Martinez's house. Martinez sent a text message to Bustos, but she did not respond. Lopez picked up Martinez and drove to Robles's house. His car was parked outside. When they knocked on the door, one of his housemates answered. Lopez went to Robles's bedroom. It was locked.

Martinez went outside to call her husband. She looked into Robles's car and saw that "the seats were full of blood." She called 911. Officer Neil Patel arrived and saw the blood inside Robles's car. There was more blood on the ground outside the car and leading to the front door of the house.

Officer Patel went to Robles's bedroom. One of Robles's housemates kicked in the door. Inside was Bustos's dead body lying on the bed, a sweatshirt covering her face and a blanket over her legs. There was blood on her arms, and puncture marks on her neck, face, and torso. She had three visible stab wounds to her upper torso. Her throat had also been slit.

Bustos had a total of 30 stab wounds on the front and back of her neck and torso. Six were fatal. Her esophagus was punctured. Her lungs and kidneys were perforated. Her jugular vein and diaphragm were severed. She had no defensive wounds.

Bustos was alive when she was stabbed. She likely lost consciousness within one minute, and died from asphyxiation and exsanguination within five minutes. She had been dead since at least 3:00 a.m.

DNA from the blood in Robles's car matched Bustos's. Based on the blood patterns, Bustos was likely stabbed outside the car and put inside while bleeding.

Police found Robles's blood-stained clothes and shoes in his bedroom. There was a knife sheath attached to the headboard of the bed. A bloody knife was wrapped in a shirt on the floor. DNA from the blood on the blade matched Bustos's. Robles's DNA was on the handle.

Bustos's purse was near her body. Inside was a receipt for a $200 ATM withdrawal made the previous evening. The purse contained no cash.

Bank records showed that Robles withdrew nearly $600 from his bank account in the days leading up to Bustos's death. After the $400 withdrawal in Solvang there were three more withdrawals from a Mexican ATM. Robles's account was overdrawn after the last withdrawal.

On June 27, Robles called Officer Garcia from Mexico. Robles denied any involvement in "that thing." Garcia urged him to turn himself in. Robles demurred and said that Garcia would find his body on "Sunday."

In April 2014—almost two years after Bustos's death—Robles was extradited to the United States. Lompoc

police officers took him into custody at Los Angeles International Airport (LAX). Prosecutors charged Robles with Bustos's murder.

At trial, Robles testified in his own defense. He said that he met two "dangerous people" through a drug dealer he knew, and they told him he could make money transporting suitcases full of cash across the border. Bustos agreed to transport the suitcases to help finance her trip to Mexico. After Robles and Bustos left her family's house they drove to his house. Bustos told Robles that she was too afraid to take the suitcases with her to Mexico. Robles called the "dangerous people" and told them of Bustos's decision. They told him to wait for a phone call. A while later, someone called Robles and told him to meet them behind a warehouse.

Robles and Bustos drove to the warehouse and parked next to a black car. Another car pulled up behind them. Two men got out and demanded the suitcases. Robles said they were at his house. The men said they were going to take Robles to his house to retrieve them.

Bustos stayed in Robles's car while the men drove Robles to his house. After retrieving the suitcases, one of the men said that "something suddenly came up" and they left Robles on the side of the road. Robles walked back to the warehouse. When he arrived, the black car was gone. He opened the door to his car and saw Bustos slumped over the driver's seat, covered in blood. She was dead.

Robles drove to his house. He carried Bustos's body inside and laid it on the bed. He changed his clothes, took his phone and wallet, and left.

Bueno drove Robles to Solvang, where he withdrew money from an ATM, and then on to Santa Barbara. From there,

he took a taxi to Tijuana. He then traveled to Sinaloa and Jalisco. He returned to the United States in 2014.

Robles denied covering Bustos's body with a sweatshirt and blanket. He did not have a knife in his car, nor did he wrap one in a shirt and leave it in his room. He did not take any money from Bustos's purse and did not take her cell phone. There was no tension or jealousy in their relationship.

DISCUSSION

I. The jury's premeditation finding

Robles contends his first degree murder conviction should be either reversed or reduced to second degree because prosecutors presented insufficient evidence that the murder was deliberate and premeditated. We disagree.

"'"'A verdict of deliberate and premeditated first degree murder requires more than a showing of intent to kill. . . . 'Deliberation' refers to careful weighing of considerations in forming a course of action; 'premeditation' means thought over in advance. . . . 'The process of premeditation and deliberation does not require any extended period of time. "The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly."'"' [Citation.]" (*People v. Ghobrial* (2018) 5 Cal.5th 250, 278.)

To determine whether a murder was deliberate and premeditated, "we apply the tripartite test of *People v. Anderson* (1968) 70 Cal.2d 15." (*People v. Sanchez* (1995) 12 Cal.4th 1, 32, disapproved on another ground by *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) We examine evidence of the defendant's "(1) planning activity; (2) motive (established by a prior relationship and/or conduct with the victim); and (3) manner of

killing." (*Ibid.*) We will uphold a jury's premeditation finding if there is "'evidence of all three types,'" "'extremely strong evidence'" of planning, or evidence of motive in conjunction with evidence of either planning or manner of killing. (*Ibid.*)

We "review the entire record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—from which a reasonable trier of fact could find that the defendant premeditated and deliberated beyond a reasonable doubt." (*People v. Perez* (1992) 2 Cal.4th 1117, 1124.) A defendant's mental state is "rarely susceptible of direct proof," however, and must generally be proven with circumstantial evidence. (*People v. Thomas* (2011) 52 Cal.4th 336, 355 (*Thomas*).) We must therefore determine whether the circumstances justify the jury's finding. (*People v. Tafoya* (2007) 42 Cal.4th 147, 170.) In making this determination, we "accept [all] logical inferences that the jury might have drawn from the circumstantial evidence." (*People v. Maury* (2003) 30 Cal.4th 342, 396.) That the circumstances might also be "'"reconciled with a contrary finding" does not render the evidence insubstantial.' [Citation.]" (*Tafoya*, at p. 170.)

Substantial evidence supports the jury's finding that Robles committed deliberate, premeditated murder. First, a rational jury could infer that Robles was planning to kill Bustos. Robles stabbed Bustos after they left his house, indicating that he either took a knife with him when they left or already had one in his car. That constitutes planning activity. (*People v. Wharton* (1991) 53 Cal.3d 522, 547; see also *People v. Lee* (2011) 51 Cal.4th 620, 636 (*Lee*) [defendant brought loaded gun with him on night victim was killed]; *People v. Steele* (2002) 27 Cal.4th 1230, 1250

[defendant carried knife into victim's home].) Robles also withdrew a significant amount of money from his bank account in the days leading up to Bustos's murder. The jury could reasonably infer that Robles made those withdrawals in anticipation of killing Bustos and fleeing the area. (Cf. *Thomas*, *supra*, 52 Cal.4th at p. 355 [defendant's actions leading up to crime relevant to proving mental state].)

Second, a jury could find that Robles had a motive to kill Bustos from the evidence suggesting that she was planning to end their relationship. The night before her death, Bustos sent Robles a text message saying that it may be better if they did not see each other. The next morning, she told Martinez that she had been trying to break up with Robles. She then sent a message to Robles that they should take advantage of their time together that evening "[l]ike if it was the last time." Robles immediately expressed concern, sending several messages throughout the day seeking to confirm that that evening would not be their last together. Anger or depression stemming from the potential end of a relationship can support a finding of motive. (*People v. Disa* (2016) 1 Cal.App.5th 654, 666 (*Disa*).)

Third, a rational jury could infer that Robles's manner of killing showed deliberation and premeditation. Robles stabbed Bustos 30 times. The amount of time it took Robles to inflict so many wounds gave him ample time to reflect on his actions. (*People v. Pride* (1992) 3 Cal.4th 195, 247-248; *People v. Shamblin* (2015) 236 Cal.App.4th 1, 11-12.)

All of the stab wounds Robles inflicted were on the front and back of Bustos's torso. Six of them were fatal. Such a precise attack to a particularly vulnerable area of the body indicates "he intended death and no other result." (*People v.*

Memro (1995) 11 Cal.4th 786, 863; see also *People v. San Nicolas* (2004) 34 Cal.4th 614, 658-659 (*San Nicolas*) ["sheer number" of lethal wounds provided sufficient evidence of deliberation and premeditation].)

Bustos lost consciousness within one minute of the first fatal stab wound Robles inflicted. His decision to continue stabbing her multiple times after she passed out is strong evidence of premeditation and deliberation. (*People v. Hovarter* (2008) 44 Cal.4th 983, 1020; *People v. Stitely* (2005) 35 Cal.4th 514, 544.) That such an attack might also suggest a killing committed in rage does not negate that inference. (*San Nicolas*, *supra*, 34 Cal.4th at p. 659.) Substantial evidence supports the jury's determination that Robles carefully weighed the consequences of his actions prior to the murder of Bustos.

II. Evidence of prior acts of domestic violence

Next, Robles mounts several challenges to the trial court's admission of evidence of his prior acts of domestic violence and the corresponding jury instructions.

A. Relevant proceedings

Prior to trial, prosecutors moved to admit evidence of Robles's acts of domestic violence against his previous girlfriend, B.T. In their motion, prosecutors said that Robles and B.T. dated from mid-2009 to June 2010. B.T. broke up with him after he threw her to the ground. Over the next three months, Robles threatened, stalked, and harassed her, and sent sexually explicit videos of her to her friends and family. Prosecutors argued this evidence showed Robles's tendency to grow increasingly violent when a girlfriend attempted to end their relationship.

Robles argued the evidence was not relevant because it was not similar to the charged crime of murder. He also

argued it was unduly prejudicial and its presentation would consume too much time.

The trial court found the evidence relevant to Robles's motive and intent and to show that he acted according to a common plan or scheme. It was not unduly prejudicial and would not require an undue consumption of time. The court admitted the evidence pursuant to Evidence Code sections 1101 and 1109.

At trial, B.T. testified that Robles was "very controlling and very possessive." When she first attempted to end their relationship, he grabbed her arm and threw her to the ground. He then went to the restaurant where she worked, sat at a table, and watched her until police made him leave. He also showed up during B.T. and her friends' regular trip to the rodeo. Robles had not previously been to either the restaurant or the rodeo.

Robles repeatedly called B.T. and asked her to resume their relationship. He threatened to send sexually explicit videos of her to her friends and family if she refused. B.T. acceded to Robles's request. He sent the videos to one of her friends anyway.

B.T. broke up with Robles after he sent the videos. She later reunited with him in hopes of preventing him from sending them to her mother. After she broke up with him a third time, he called her 10 to 15 times per day. In one call he threatened to kill her and put a bomb under her mother's car. B.T. obtained a restraining order against Robles.

At the conclusion of testimony, the trial court instructed the jury pursuant to CALCRIM No. 375. The instruction told jurors that they could consider evidence of

Robles's acts of domestic violence against B.T. to determine whether he was the person who killed Bustos, whether he acted with the intent to kill her, whether he had a motive to kill, and whether he killed according to a common plan or scheme. The court also instructed the jury on the limited use of evidence of uncharged domestic violence. (See CALCRIM No. 852A.)

B. Evidence Code sections 352, 1101, and 1109

Robles first contends the trial court erred when it admitted evidence of his acts of domestic violence against B.T. We disagree.

Pursuant to Evidence Code section 1109, if a defendant is accused of committing domestic violence, the jury may consider evidence of prior acts of domestic violence for any relevant purpose. (*People v. James* (2000) 81 Cal.App.4th 1343, 1353, fn. 7; see *People v. Falsetta* (1999) 21 Cal.4th 903, 922 (*Falsetta*).) But "even if the evidence is admissible under [Evidence Code] section 1109, the trial court must still determine, pursuant to [Evidence Code] section 352, whether the probative value of the evidence is substantially outweighed by the probability the evidence will consume an undue amount of time or create a substantial danger of undue prejudice, confusion of issues, or misleading the jury." (*People v. Brown* (2011) 192 Cal.App.4th 1222, 1233 (*Brown*).) We review the court's determinations on these issues for abuse of discretion. (*Ibid*.)

There was no abuse of discretion here. Murder can be an offense involving domestic violence. (*Brown*, *supra*, 192 Cal.App.4th at p. 1237.) The jury was thus permitted to consider Robles's acts of domestic violence against B.T. for any relevant purpose. (*Id*. at p. 1233 [admission of prior acts evidence applies to both charged and uncharged acts].)

Robles counters that his acts of domestic violence against B.T. were not sufficiently similar to Bustos's murder to be admissible pursuant to Evidence Code section 1109. In his view, that section "only permits a jury to consider prior incidents of domestic violence for the purpose of showing a defendant's propensity to commit offenses *of the same type*." (Original italics.) But Evidence Code section 1109 would "serve no purpose" if the charged offense and the prior acts were required to be so "sufficiently similar that evidence of the latter would be admissible under Evidence Code section 1101." (*People v. Frazier* (2001) 89 Cal.App.4th 30, 40-41.) All that is required is that both the charged and uncharged offenses involve domestic violence as defined in Evidence Code section 1109. (*Id.* at p. 41; see *Falsetta*, *supra*, 21 Cal.4th at p. 916.) Here, they did.[4] (See *Disa*, *supra*, 1 Cal.App.5th at p. 672 [assault]; *Brown*, *supra*, 192 Cal.App.4th at p. 1237 [murder]; *People v. Ogle* (2010) 185 Cal.App.4th 1138, 1144 [stalking].)

Alternatively, Robles argues the prejudicial effect of the evidence outweighed its probative value. But the evidence of Robles's domestic violence against B.T. was highly probative. Robles reacted similarly when B.T. and Bustos attempted to end their relationships with him: He texted or called each woman multiple times, threatened violence against B.T.'s family when she broke up with him, and threatened to kill himself when

---

[4] Because we conclude that the evidence of Robles's acts of domestic violence against B.T. was generally admissible pursuant to Evidence Code section 1109, we need not consider whether it was admissible pursuant to Evidence Code section 1101, subdivision (b). (*People v. Jennings* (2000) 81 Cal.App.4th 1301, 1316; see also *People v. Poplar* (1999) 70 Cal.App.4th 1129, 1138.)

Bustos did the same. The incidents with B.T. occurred less than two years before Bustos's murder. And the source of the evidence of domestic violence Robles committed against B.T. was independent of that he committed against Bustos. (*People v. Balcom* (1994) 7 Cal.4th 414, 427 [listing factors that increase probative value].)

The evidence was unlikely to evoke an emotional bias against Robles. (*People v. Karis* (1988) 46 Cal.3d 612, 638 [defining undue prejudice].) Proof of Robles's acts against B.T. was straightforward and, other than whether he sent out explicit photographs and videos of her, undisputed. The acts were far less serious than Bustos's murder, and there was little chance the jury would confuse the two incidents. And though Robles's actions against B.T. did not result in a conviction or punishment, they were subject to police intervention due to the restraining order B.T. took out against him. (*People v. Rucker* (2005) 126 Cal.App.4th 1107, 1119 [listing factors relevant to determining prejudice].) Because the probative value of the evidence involving B.T. outweighed its danger of undue prejudice, the trial court did not abuse its discretion when it admitted the evidence.

C. CALCRIM No. 375

Next, Robles contends, and the Attorney General concedes, the trial court erred when it instructed the jury that it could consider evidence of his prior acts of domestic violence on the issue of identity. We agree. But the error was harmless.

CALCRIM No. 375 instructs the jury that it may consider evidence of a defendant's prior crimes for a limited purpose, such as to show identity, intent, motive, or the existence of a common plan or scheme. When the trial court provides the instruction, it "should be careful to limit the issues upon which

such evidence is relevant and admissible by striking from the instruction those issues upon which the evidence is not admissible." (*People v. Swearington* (1977) 71 Cal.App.3d 935, 949.) It is error if the court does not do so. (*Id.* at p. 947; see also *People v. Rollo* (1977) 20 Cal.3d 109, 122-123 [error for court to provide an instruction that does not apply to the facts of the case], superseded by statute on another ground as stated in *People v. Castro* (1985) 38 Cal.3d 301, 308.)

The trial court erred when it told jurors that they could consider evidence of Robles's domestic violence against B.T. when determining whether he "was the person who committed [murder] in this case." To be relevant to the issue of identity, a defendant's prior crimes must be highly similar to those charged. (*People v. Ewoldt* (1994) 7 Cal.4th 380, 403.) Here, the assault, stalking, and threats to B.T. shared few similarities with Bustos's murder. The evidence thus did not demonstrate the "'pattern . . . so unusual and distinctive as to be like a signature'" required to be admissible on the issue of identity. (*Ibid.*)

But the error was harmless. When the trial court admits evidence of a defendant's prior crimes without properly instructing the jury as to its limited purpose, reversal is not required unless it is reasonably probable that the defendant would have obtained a different result at trial absent the erroneous instruction. (*People v. Nottingham* (1985) 172 Cal.App.3d 484, 501; see *People v. Watson* (1956) 46 Cal.2d 818, 836.)

There was no such reasonable probability here. The evidence that Robles killed Bustos was overwhelming. The two were together on the night of Bustos's murder. Bustos was found dead in Robles's locked bedroom. Her blood was in Robles's car

and on the ground leading to his house. It was also on his clothes and shoes. Also in the bedroom was a knife with Bustos's blood on the blade and Robles's DNA on the handle. Robles fled to Mexico after Bustos's death. He took money from Bustos's purse to help finance his journey. He took her cell phone with him, and sent text messages from the phone throughout the night to make it look like she was still alive.

Additionally, CALCRIM No. 375 told jurors to "consider the similarity or lack of similarity" between the acts of domestic violence against B.T. and Bustos's murder when evaluating whether Robles did, in fact, kill Bustos. The differences between the two incidents were "so notable that the irrelevancy of the instruction" on identity was obvious. (*People v. Garcia* (1981) 115 Cal.App.3d 85, 108.) The instruction also told jurors that the evidence of the prior acts of domestic violence was not sufficient to prove that Robles was Bustos's killer; prosecutors still had to prove that fact beyond a reasonable doubt. We presume jurors understood and followed the instructions. (*People v. McKinnon* (2011) 52 Cal.4th 610, 670 (*McKinnon*).) There was no reasonable probability that the jury determined that Robles was Bustos's killer from the evidence of his prior acts of domestic violence.

D. Due process

Finally, Robles contends Evidence Code section 1109 violates a defendant's due process right to a fair trial. He recognizes, however, that our Supreme Court has rejected an analogous challenge to Evidence Code section 1108, which allows jurors to consider a defendant's prior sexual offenses in determining whether they have the propensity to commit a charged sexual offense. (*Falsetta*, *supra*, 21 Cal.4th at p. 917.)

Myriad cases have applied *Falsetta*'s reasoning to determine that Evidence Code section 1109 does not violate due process. (*Brown*, *supra*,192 Cal.App.4th at pp. 1233, fn. 14, 1236, fn. 16; see also *People v. Johnson* (2010) 185 Cal.App.4th 520, 529 [compiling cases].) We agree with their analyses.

Robles mounts the same due process attack on CALCRIM No. 852A, the jury instruction that corresponds to Evidence Code section 1109. Again, however, he recognizes that our Supreme Court has rejected the equivalent challenge to CALJIC No. 2.50.01, the jury instruction that corresponds to Evidence Code section 1108. (*People v. Reliford* (2003) 29 Cal.4th 1007, 1013.) And again, the published cases have unanimously applied *Reliford*'s reasoning to conclude that the substantively identical predecessors to CALCRIM No. 852A do not violate due process. (See *People v. Reyes* (2008) 160 Cal.App.4th 246, 253; *People v. Johnson* (2008) 164 Cal.App.4th 731, 739-740 [opn. of Cantil-Sakauye, J.].) We agree with these cases' analyses. Robles's due process challenges accordingly fail.

III. CALCRIM Nos. 521 and 522

Robles next claims CALCRIM Nos. 521 and 522 each misstate the law. We are not persuaded.

We independently review whether jury instructions correctly state the law. (*People v. Posey* (2004) 32 Cal.4th 193, 218.) We review "the instructions as a whole in light of the entire record" (*People v. Lucas* (2014) 60 Cal.4th 153, 282, disapproved on another ground by *People v. Romero and Self* (2015) 64 Cal.4th 1, 53, fn. 19), with the assumption that jurors are "capable of understanding and correlating" all of the instructions given (*People v. Mills* (1991) 1 Cal.App.4th 898, 918). We give the instructions reasonable, rather than technical, meanings (*People*

v. Kainzrants (1996) 45 Cal.App.4th 1068, 1074), and interpret them to support the judgment if possible (*People v. Laskiewicz* (1986) 176 Cal.App.3d 1254, 1258). Our duty is to determine "whether there is a reasonable likelihood that the jury misunderstood and misapplied the instruction[s]." (*People v. Mayfield* (1997) 14 Cal.4th 668, 777, abrogated on another ground by *People v. Scott* (2015) 61 Cal.4th 363, 390, fn. 2.)

A. Relevant proceedings

At the conclusion of testimony, the trial court instructed the jury on murder (CALCRIM No. 520), first degree murder (CALCRIM No. 521), provocation (CALCRIM No. 522), and voluntary manslaughter (CALCRIM No. 570). Of these instructions, Robles objected only to CALCRIM No. 521 because, in his view, the prosecution presented insufficient evidence of premeditation. The court overruled his objection.

Pursuant to CALCRIM No. 521, the trial court told the jury that "[Robles] acted *deliberately* if he carefully weighed the considerations for and against his choice and, knowing the consequences, decided to kill. [He] acted with *premeditation* if he decided to kill before completing the acts that caused death." (Original italics.) The court also told the jury that "[a] decision to kill made rashly, impulsively, or without careful consideration is not deliberate and premeditated."

Pursuant to CALCRIM No. 522, the trial court instructed the jury that:

> Provocation may reduce a murder from first degree to second degree and may reduce a murder to manslaughter. The weight and significance of the provocation, if any, are for you to decide. If you

> conclude that [Robles] committed murder but was provoked, consider the provocation in deciding whether the crime was first or second degree murder. Also, consider the provocation in deciding whether [Robles] committed murder or manslaughter.

The court then told the jury that:

> A killing that would otherwise be murder is reduced to voluntary manslaughter if the defendant killed someone because of a sudden quarrel or in the heat of passion.
>
> [Robles] killed someone because of a sudden quarrel or in the heat of passion if:
>
> 1. [He] was provoked;
>
> 2. As a result of the provocation, [he] acted rashly and under the influence of intense emotion that obscured his reasoning or judgment; and
>
> 3. The provocation would have caused a person of average disposition to act rashly and without due deliberation, that is, from passion rather than from judgment.

(See CALCRIM No. 570.)

Robles requested no clarifications or modifications to these instructions. Nor did he request that the trial court

instruct the jury with the prior version of CALCRIM No. 521, with CALJIC No. 8.20 (Deliberate and Premeditated Murder), or with CALJIC No. 8.73 (Evidence of Provocation May Be Considered in Determining Degree of Murder).

B. CALCRIM No. 521

Robles contends the 2010 version of CALCRIM No. 521 incorrectly defines "premeditation" because it permitted the jury to find premeditation if it determined that he decided to kill after he commenced his assault but before he applied lethal force. The Attorney General argues Robles forfeited his contention because he did not request clarification of the instruction at trial. (See *Lee*, *supra*, 51 Cal.4th at p. 638 [failure to request pinpoint instruction forfeits claim on appeal].) But Robles does not contend CALCRIM No. 521 requires clarification; he contends it is an incorrect statement of law. His contention is therefore reviewable, despite his lack of objection below. (*People v. Buenrostro* (2018) 6 Cal.5th 367, 428 (*Buenrostro*).)

It nevertheless fails on the merits. Robles focuses on the part of CALCRIM No. 521 that instructed the jury that "[he] acted with premeditation if he decided to kill before *completing* the acts that caused death." (Italics added.) To Robles, this told the jury that it could find premeditation if it determined that he decided to kill Bustos *after* he began stabbing her but *before* he delivered the lethal wound. But such a finding is permissible. So long as the decision to kill precedes the act that ultimately causes death, murder is premeditated. (See, e.g., *People v. Raley* (1992) 2 Cal.4th 870, 888 (*Raley*) [premeditation found where defendant stabbed women, let them bleed for 18 hours, beat them again, and dumped them in an isolated area], superseded by statute on another ground as stated in *People v. Brooks* (2017) 3 Cal.5th 1,

62-63, fn. 8; *People v. Ainsworth* (1988) 45 Cal.3d 984, 1023-1024 (*Ainsworth*) [premeditation found where defendant shot victim then let her bleed to death during a lengthy car ride], disapproved on another ground by *People v. Sanchez* (2016) 63 Cal.4th 665, 686, fn. 13.)

Alternatively, Robles claims the challenged portion of CALCRIM No. 521 allowed the jury to find premeditation if it determined that he formed the intent to kill *while* he was stabbing Bustos. But CALCRIM No. 521 told jurors that, to find that Robles acted deliberately, they had to determine that he weighed the consequences of killing Bustos before he decided to kill. It also told jurors that "careful consideration" had to precede the act(s) that caused her death. Considered as a whole, CALCRIM No. 521 correctly told jurors that the act(s) that caused Bustos's death had to follow his decision to kill.

Robles argues that the trial court should have nevertheless clarified the definition of "premeditation" with one of the predecessors to CALCRIM No. 521. But Robles did not request such a clarification at trial. His argument is forfeited. (*Buenrostro*, *supra*, 6 Cal.5th at p. 428.)

Moreover, the predecessors to CALCRIM No. 521 would not have told jurors that, to find premeditation, they had to determine that Robles decided to kill Bustos before he took *any* action against her, as he assumes. The 2007-2008 version of CALCRIM No. 521 states that a defendant "acted with premeditation if [they] decided to kill before committing the act that caused death." CALJIC No. 8.20 states that a defendant "premeditates by deliberating before taking action," defining the action as a "killing." Both of these instructions fully comport with the notion that premeditation merely requires that a

defendant form the intent to kill before carrying out the lethal act. Unlike Robles, they do not conflate the beginning of an act or series of acts with the beginning of a lethal act. (Cf. *People v. Millwee* (1998) 18 Cal.4th 96, 135, fn. 13 [CALJIC No. 8.20 is a correct statement of law]; *People v. Jones* (2014) 223 Cal.App.4th 995, 1001 (*Jones*) [2007-2008 version of CALCRIM No. 521 is a correct statement of law].) They would not have provided the clarification Robles believes was necessary.

C. CALCRIM No. 522

Robles contends CALCRIM No. 522 is an incomplete statement of law because it prevented the jury from considering unreasonable provocation, which reduces first degree murder to second degree. (See *People v. Hernandez* (2010) 183 Cal.App.4th 1327, 1332 (*Hernandez*).) He argues the trial court should have instead instructed the jury with CALJIC No. 8.73, which fully and correctly defines the law on provocation. Robles concedes, however, that CALJIC No. 8.73 is a pinpoint instruction that need only be given upon request. (*People v. Rogers* (2006) 39 Cal.4th 826, 878-879.) Because he did not request it, his contention is forfeited. (*Lee*, *supra*, 51 Cal.4th at p. 638.)

Robles claims trial counsel provided ineffective assistance because she did not request CALJIC No. 8.73. But as two of our sister courts have held, CALCRIM No. 522 correctly states the law on provocation when considered alongside CALCRIM Nos. 520, 521, and 570. (*Jones*, *supra*, 223 Cal.App.4th at pp. 999-1001; *Hernandez*, *supra*, 183 Cal.App.4th at pp. 1332-1335.) The trial court here provided those instructions. Counsel thus did not render deficient performance when she did not request CALJIC No. 8.73. (*People v. Castillo* (1997) 16 Cal.4th 1009, 1018 [where instructions adequately

advise jury of the law, competent counsel could reasonably conclude that pinpoint instruction is unnecessary].) Robles's ineffective assistance of counsel claim accordingly fails. (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1126 (*Rodrigues*) [ineffective assistance of counsel claim fails on insufficient showing of either deficient performance or prejudice].)

IV. Prosecutorial misconduct

Robles contends prosecutors committed misconduct at several points during trial. We again disagree.

"'A prosecutor who uses deceptive or reprehensible methods to persuade the jury commits misconduct.'" (*People v. Friend* (2009) 47 Cal.4th 1, 29 (*Friend*).) "'[S]uch actions require reversal under the federal Constitution when they infect the trial with such "'unfairness as to make the resulting conviction a denial of due process.'" [Citations.]'" (*Ibid.*) "'Under state law, a prosecutor who uses such methods commits misconduct even when those actions do not result in a fundamentally unfair trial.' [Citation.]" (*Ibid.*)

Where, as here, the defendant's claims of misconduct are based on the prosecutor's comments before the jury, "the defendant must show that, 'in the context of the whole argument and the instructions' [citation], there was 'a reasonable likelihood the jury understood or applied the complained-of comments in an improper or erroneous manner. [Citations.]'" (*People v. Centeno* (2014) 60 Cal.4th 659, 667, alterations omitted.) We will not "'"lightly infer"'" that the jury did so. (*Ibid.*) Rather, we presume that the jury "'drew . . . the least damaging meaning from the prosecutor's statements. [Citation.]' [Citation.]" (*Ibid.*) No misconduct occurred if the jury would have understood the

statements to "imply nothing harmful." (*People v. Woods* (2006) 146 Cal.App.4th 106, 111.)

A. Robles's custody status

1. Relevant proceedings

Prior to trial, Robles moved the trial court to exclude evidence about his arrest in Mexico, extradition to the United States, and being taken into custody upon arrival at LAX. The court granted Robles's motion and ruled that his custodial status could not be referenced at trial. Prosecutors were not to use terms like "custody" or "escort" or "apprehend" or "extradite" in front of the jury. They were to tell their witnesses to limit their testimony accordingly.

At trial, prosecutor Anne Nudson asked Martinez whether she worked with prosecutor Brandon Jebens to "get[] [Robles] back from Mexico." Martinez replied that she did. Nudson then asked Martinez, "So you had to testify for the extradition?" Robles objected and moved to strike. The trial court sustained the objection and struck the question.

The trial court later held a hearing "on the extradition issue" outside the presence of the jury. Jebens told the court that he intended to have Detective Daniel Villareal testify that he went to Mexico, recovered Robles, and brought him to the United States. He did not intend to comment on Robles's right to an extradition hearing. The court ruled that the parties had to sanitize the evidence and ensure that the witnesses did not refer to Robles's custodial status or use terms like "escort." Prosecutors could use leading questions to avoid mistakes.

When the jury returned, Jebens asked Detective Villareal if he traveled to Mexico in April 2014 to meet with Robles. Villareal replied that he did, and said that Robles

accompanied him back to LAX on a commercial flight the next day. Jebens then asked what happened upon arrival at LAX. Villareal said, "I [j]ust turned custody over to [Detective Vincent Magallon] and . . . left." Robles objected and moved to strike the answer. After a discussion at bench, the trial court sustained Robles's objection and ordered the jury to disregard Villareal's answer.

Later during trial, Jebens asked Officer Garcia, "And to your knowledge, was [Robles] apprehended until [*sic*] 2014?" The trial court sustained Robles's objection, and granted his motion to strike.

At the conclusion of testimony, the trial court told jurors that "[n]othing that the attorneys say is evidence. . . . Only the witnesses' answers are evidence. . . . [¶] During the trial, the attorneys may have objected to questions or moved to strike answers given by the witnesses. . . . If I sustained an objection, you must ignore the question. . . . If I ordered testimony stricken from the record[,] you must disregard it and must not consider that testimony for any purpose." (See CALCRIM No. 222.) The court also told jurors that "[t]he fact that [Robles] was arrested, charged with a crime, or brought to trial is not evidence of guilt." (See CALCRIM No. 104.)

2. Analysis

Robles claims prosecutors committed misconduct when, in violation of the trial court's rulings, they asked questions and elicited testimony related to his apprehension, custodial status, and extradition. (Cf. *People v. Sutton* (1993) 19 Cal.App.4th 795, 799-804 [evidence of defendant's refusal to waive extradition may be prejudicial].) The Attorney General argues Robles forfeited this claim because he "failed to object to

the prosecutors' questions *as misconduct*." (See *People v. Seumanu* (2015) 61 Cal.4th 1293, 1328, italics added [defendant must make specific objection and request curative admonition to preserve claim of prosecutorial misconduct].) But Robles objected to all of the questions that ran afoul of the trial court's rulings, and moved to strike each of the offending answers: He objected when Nudson referenced his extradition to the United States. He objected when Detective Villareal referenced his custodial status. And he objected when Jebens asked Officer Garcia when he was apprehended. In each instance, the court sustained Robles's objections and granted his motions to strike.

Robles's timely objections were specific enough to alert the trial court to prosecutors' failure to comply with its rulings. (*Friend*, *supra*, 47 Cal.4th at pp. 33-34.) And though the record does not show that Robles requested curative admonitions, he substantially complied with the obligation to do so by moving the court to strike the offending questions and answers. (*People v. Bonin* (1988) 46 Cal.3d 659, 689, overruled on other grounds by *People v. Hill* (1998) 17 Cal.4th 800, 823, fn. 1.) He has thus preserved his claim of prosecutorial misconduct. (*Ibid*.)

It nevertheless fails on the merits. Both Nudson and Jebens erred when they asked questions that violated the trial court's rulings. (*Friend*, *supra*, 47 Cal.4th at p. 33.) Jebens also erred when he failed to ensure that Detective Villareal refrain from making statements that violated the court's rulings. (*People v. Warren* (1988) 45 Cal.3d 471, 481-482; see also *People v. Silva* (2001) 25 Cal.4th 345, 373 ["it is misconduct to elicit or attempt to elicit inadmissible evidence in violation of a court ruling"].) But the errors were harmless.

The allusions to Robles's custody status were brief, occurring just three times during nine days of testimony. (Cf. *People v. Bradford* (1997) 15 Cal.4th 1229, 1336 [jurors did not impermissibly consider defendant's custody status where witness made "isolated" comment].) The errors were quickly corrected, as the trial court immediately sustained all of Robles's objections to the challenged questions and struck the offending answers. (*People v. Penunuri* (2018) 5 Cal.5th 126, 149-150 [no misconduct where court sustains objection].) The court also instructed jurors to ignore a question if it sustained an objection and to disregard any testimony that was stricken. And it told jurors that facts related to Robles's arrest and the charges against him were not evidence of his guilt. We presume jurors understood and followed these instructions. (*McKinnon*, *supra*, 52 Cal.4th at p. 670.) We accordingly reject Robles's first claim of prosecutorial misconduct.

B. Beltran *error*

1. Relevant proceedings

During closing arguments, Jebens told jurors that, to find Robles guilty of manslaughter instead of murder, they had to find that:

> [He] was provoked to the point where an ordinary person would have a violent, irrational reaction that would make them want to kill . . . . Now when we are talking about provocation that would make somebody want to kill we are not talking about a provocation that would make [Robles] want to kill. He doesn't get to choose what provokes him or not. It is provocation that would make an ordinary person react in a way that they would end up killing somebody.

Robles objected that Jebens misstated the standard. The trial court overruled the objection. Jebens then continued his argument, stating that sufficient provocation required considering "whether a person of average disposition in the same situation and knowing the same facts would have reacted from passion rather than judgment."

Outside the presence of the jury, Robles explained that his objection was based on our Supreme Court's holding in *People v. Beltran* (2013) 56 Cal.4th 935 (*Beltran*). The trial court reviewed the case, reversed its ruling, and sustained Robles's objection, finding that Jebens misstated the law on provocation. The court then reinstructed the jury with CALCRIM No. 570.

During his closing argument, Robles reiterated that "the definition of provocation is provocation that would have caused a person of average disposition to act rashly and without due deliberation—that is, from passion rather than from judgment." He emphasized that heat of passion "does not require that an ordinary person would react in a violent manner or react to kill somebody . . . . What is required is that an ordinary person would react in a rational [*sic*] manner, rashly." Robles then attempted to correct his mistake: "Irrational, somebody who is not [*sic*] thinking in an emotional way, not in a way where they are thinking about what is happening . . . ."

2. Analysis

Robles claims Jebens committed misconduct when he misstated the law by arguing that the jury should consider whether Robles was provoked to the point where an ordinary person would react by killing. (See *Beltran*, *supra*, 56 Cal.4th at p. 949 [as it relates to voluntary manslaughter, provocation focuses on defendant's state of mind, not the act committed].) We

agree. (*People v. Bell* (1989) 49 Cal.3d 502, 538 [error for prosecutor to misstate law].) Jebens should have told the jury to focus on Robles's state of mind, not his actions. (*Beltran*, at p. 949.)

But in context of the additional arguments and the trial court's jury instructions, we see no reasonable likelihood that the jury applied Jebens's erroneous comments in an improper manner. After he invited jurors to focus on Robles's actions, Jebens corrected himself and told jurors to focus instead on Robles's state of mind. (Cf. *Beltran*, *supra*, 56 Cal.4th at p. 949.) Counsel for Robles reinforced the proper focus, telling jurors that any provocation had to be such that it would cause an average person to act rashly, from passion rather than judgment, or in an irrational manner. (*Ibid.*) The court also reiterated the proper focus, interrupting Jebens's argument to reinstruct the jury pursuant to CALCRIM No. 570 and tell it to focus on Robles's state of mind. We presume the jury followed the court's instructions rather than any erroneous argument of counsel. (*People v. Morales* (2001) 25 Cal.4th 34, 47; see also *People v. Mathews* (1994) 25 Cal.App.4th 89, 99 ["instruction by the trial court . . . weigh[s] more than a thousand words from the most eloquent defense counsel"].) Robles's second claim of prosecutorial misconduct accordingly fails.

C. Premeditation formed during Bustos's murder

1. Relevant proceedings

During closing argument, Jebens defined "premeditation" as "decid[ing] to kill before the act." He then argued that Robles premeditated before killing Bustos: "At some point in 30 stab wounds [Robles] made the decision to keep going. All efforts after that decision is [*sic*] premeditated and deliberate.

This is a first degree murder. . . . This is 30 stab wounds over the course of time. It takes time to stab somebody 30 times, and at some point when you make that decision that I'm going to keep stabbing you, you realize that that person is trying to kill the other person, that is what makes this a first degree premeditated and deliberate killing."

2. Analysis

Robles claims Jebens committed misconduct because he misstated the law when he told jurors that they could find premeditation if they determined that Robles formed the intent to kill while applying lethal force. But Jebens said no such thing. Rather, he told jurors that any lethal act committed *after* Robles decided to kill Bustos was premeditated murder. That is a correct statement of law. (*Raley*, *supra*, 2 Cal.4th at p. 888; *Ainsworth*, *supra*, 45 Cal.3d at pp. 1023-1024.)

D. Theory of after-formed premeditation

1. Relevant proceedings

The trial court instructed the jury that it could consider any false statements, suppression or fabrication of evidence, or flight as evidence of Robles's consciousness of guilt. (CALCRIM Nos. 362, 371, & 372.) During closing argument, Jebens highlighted Robles's actions that provided such evidence: He hid Bustos's body. He took money from her and financed his flight to Mexico immediately after her death. He made false statements to Bueno, Lopez, the taxi driver, and Officer Garcia on his way there.

According to Jebens, there was only one issue in the case: "It is not provocation. It is not heat of passion. It is not I didn't have premeditation. It is that [Robles] killed . . . Bustos. This case boils down to who done it." He argued that Robles's

consciousness of guilt, when considered with the other evidence presented at trial, showed that Robles was that person.

2. Analysis

Robles claims Jebens committed misconduct when he suggested that the jury could convict him of premeditated murder based on post-killing conduct that evinced a consciousness of guilt. (*People v. Anderson* (1968) 70 Cal.2d 15, 32 [evidence relating to defendant's state of mind after killing is irrelevant to their state of mind prior to or during killing].) Again, however, Jebens suggested no such thing. Rather, he argued that the evidence of Robles's consciousness of guilt tended to show that he was the person who killed Bustos.

The trial court's instructions reinforced that proposition: They told the jury that evidence of Robles's consciousness of guilt could be considered when determining whether he killed Bustos, but said nothing about premeditation. We thus perceive no reasonable likelihood the jury believed it could find premeditation based the actions Robles took after he killed Bustos. (Cf. *People v. Crandell* (1988) 46 Cal.3d 833, 871 [instructions on consciousness of guilt do not invite jury to draw inferences about defendant's mental state], abrogated on another ground by *People v. Crayton* (2002) 28 Cal.4th 346, 364-365.)

E. Improper use of analogies

1. Relevant proceedings

During voir dire, Jebens told the jurors that premeditation and deliberation "require[] thinking and planning but not—it can be done like that. You come to an intersection or a railroad crossing, you look right, you look left, and see it is clear, you cross how long was that, three seconds?" A prospective juror expressed concern about premeditation: If it could happen

"on the spur of the moment," he would tend to view the murder as a "crime of passion" rather than premeditated murder. Jebens explained the length of time is not determinative; the focus is on the amount of reflection. He reminded jurors of his example of premeditation as "approaching a railroad and stopping, looking both ways to make sure that no train is coming and then passing on. That is a fast series of events, that is also one in which you premeditated and deliberate whether you are going to put your life at risk and go across the railroad tracks."

During closing arguments, Jebens told jurors that "premeditation [means] that they decided to kill before the act." He said that "the length of time does not determine whether the killing is deliberate and premeditated, it is the reflection that is important." He then repeated his analogy from voir dire:

> The test to the extent of reflection not the length of time, okay. Just like I used in jury selection if you stop at a railroad and you look left and you look right, you decide it is safe to go you are premeditated and deliberated that it is safe for you to pass this railroad junction. It didn't take a lot of time but you thought about it.

Robles did not object to Jebens's analogy, nor did he request any curative measure.

2. Analysis

Robles claims Jebens committed misconduct when he analogized the decision whether to risk harm or death to a premeditated decision to kill. But Jebens's analogy simply demonstrated that a deliberate, premeditated decision to kill can

be made quickly—which is a correct statement of the law. (*People v. Gomez* (2018) 6 Cal.5th 243, 282.) He also told the jury to focus on the amount of reflection rather than time when considering whether Robles premeditated. That, too, is a correct statement of the law. (*Ibid.*) Jebens's use of the railroad crossing analogy did not constitute misconduct.[5] (*People v. Avila* (2009) 46 Cal.4th 680, 715 [no misconduct where prosecutor compared length of time deciding whether to drive through yellow light to the quickness with which defendant may decide to kill].)

V. Cumulative error

Robles contends the judgment should be reversed because the errors that occurred at trial, considered cumulatively, violated his due process right to a fair trial. But we rejected all of Robles's claims of error save one—the trial court's error when it instructed jurors that they could consider evidence of Robles's prior acts of domestic violence on the issue of identity—which was harmless. We likewise reject his cumulative error contention. (*People v. Koontz* (2002) 27 Cal.4th 1041, 1094.) We would reach the same conclusion if we were to assume that the prosecutors' minor misstatements rose to the level of misconduct. (*People v. Perez* (2018) 4 Cal.5th 421, 465-466.)

VI. Custody credits

Robles contends, and the Attorney General concedes, he is entitled to two additional days of custody credits. We agree.

---

[5] Because Jebens did not misstate the law on premeditation during jury voir dire or closing argument, counsel did not perform deficiently when she did not object to his arguments and analogies. We therefore reject Robles's ineffective assistance of counsel claim based on counsel's lack of objections. (*Rodrigues*, *supra*, 8 Cal.4th at p. 1126.)

Defendants sentenced to prison are entitled to credits against their terms of imprisonment for all actual days spent in custody prior to sentencing, including the day of arrest and the day of sentencing. (*People v. King* (1992) 3 Cal.App.4th 882, 886.) Here, Robles was arrested on April 14, 2013, and sentenced on June 6, 2018. There are 1,880 days between and including those dates. Robles is entitled to two additional days of custody credits.

VII. Pitchess *proceedings*

Lastly, Robles requests that we independently review the transcript and personnel records from the in camera *Pitchess* proceedings to determine whether the trial court improperly withheld discoverable materials pertaining to Officer Garcia.

Upon a showing of good cause, a defendant has the right to discover information in a law enforcement officer's personnel file if it is relevant to the proceedings against them. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1226-1227.) Once the defendant makes the required showing, the custodian of records must present to the trial court all potentially relevant documents for in camera review. (*Id.* at pp. 1228-1229.) During the review, the custodian should state which documents were not presented to the court and why they were deemed irrelevant to the defendant's request. (*Id.* at p. 1229.) The court should make a record of the documents it examined and state whether they should be disclosed. (*Id.* at pp. 1229-1232.) We review the court's disclosure rulings for abuse of discretion. (*People v. Samayoa* (1997) 15 Cal.4th 795, 827.)

There was no abuse of discretion here. The trial court granted Robles's *Pitchess* motion requesting information in Officer Garcia's personnel file related to the falsification of police reports and on-duty alcohol use. During an in camera hearing,

the court swore in the custodian of records, who produced all potentially relevant documents to the court. The court reviewed those documents and determined that nothing was discoverable. We have reviewed the transcript of the in camera hearing and the documents produced there, and are satisfied that the court complied with the procedures set forth in *Mooc*. No additional disclosure is required.

DISPOSITION

The trial court shall modify the judgment to reflect that Robles has a total of 1,880 days of presentence custody credit. The clerk of the superior court shall correct the abstract of judgment, and forward a certified copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Gustavo E. Lavayen, Judge

Superior Court County of Santa Barbara

Sylvia W. Beckham, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and David E. Madeo, Deputy Attorneys General, for Plaintiff and Respondent.